

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Appellee,*

*v.*

DAVID ERNESTO RAMIREZ,  
*Appellant.*

No. 2 CA-CR 2016-0185  
Filed December 8, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Appeal from the Superior Court in Pinal County  
No. S1100CR201501366  
The Honorable Kevin D. White, Judge

**AFFIRMED IN PART; VACATED IN PART**

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COUNSEL

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*Counsel for Appellee*

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

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H O W A R D, Presiding Judge:

¶1 After a jury trial, David Ramirez was convicted of possession of a narcotic drug for sale, transportation of a narcotic drug for sale, and two counts of possession of drug paraphernalia. He was sentenced to concurrent prison terms, the longest of which is 15.75 years.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she reviewed the record but found no arguably meritorious issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she provided “a detailed factual and procedural history of the case with citations to the record” and asked this court to search the record for error. In our review, we identified as an arguable issue whether Ramirez’s conviction of possession of a narcotic drug for sale was proper in light of *State v. Cheramie*, 218 Ariz. 447, 189 P.3d 374 (2008). We ordered the parties to file supplemental briefs addressing this question.

¶3 We view the evidence in the light most favorable to sustaining the jury’s verdicts. See *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). In May 2014, Ramirez was arrested after a traffic stop and, during an inventory search of his vehicle, a police officer found approximately three grams of heroin, a methamphetamine pipe, syringes, and a spoon; Ramirez admitted he sold heroin, and text messages on his cellular phone were consistent with drug sales. A.R.S. §§ 13-3401(20)(jjj), 21(m), 13-3408(A)(2), (7), 13-3415(A). However, as Ramirez argues and the state concedes, he cannot be convicted of both transporting and

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possessing the same heroin for sale,<sup>1</sup> because the possession of heroin for sale is a lesser-included offense of transportation. *See Cheramie*, 218 Ariz. 447, ¶¶ 10-12, 22, 189 P.3d at 376, 378 (2008); *State v. Chabolla-Hinojosa*, 192 Ariz. 360, ¶ 21, 965 P.2d 94, 99 (App. 1998). Accordingly, we vacate his conviction and sentence for possession of a narcotic drug for sale.

¶4 The evidence supported the trial court's determination that Ramirez had at least three historical prior felony convictions. His sentences are within the statutory range and were properly imposed. A.R.S. §§ 13-703(C), (J), 13-3408(B)(7), 13-3415(A).

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental error and found none save the improper conviction of possession of a narcotic drug for sale. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985). We vacate that conviction and sentence but affirm Ramirez's remaining convictions and sentences.

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<sup>1</sup>The police officer found heroin in two separate containers, one containing 2.75 grams and the other only .11 gram. The jury found that the heroin for sale was over one gram. Thus, we agree with the parties that Ramirez's convictions of transportation and possession for sale were necessarily based on the same heroin.